GOLDEN APPROACH SDN BHD

v.

PENGARAH TANAH DAN GALIAN

HIGH COURT MALAYA, IPOH
CLEMENT SKINNER J
[ORIGINATING MOTION NO: 21-38-99]
15 NOVEMBER 2000

ENGLISH LAW: *Equity - Extent of English law applicable - Whether estoppel applies against state authority - Circumstances in which estoppel applicable*

LAND LAW: *Sale of land - Power of attorney - Whether surrender of land extinguishes power of attorney - Whether power of attorney valid - Effectiveness of*

LAND LAW: *Sub-division - Surrender of land - Distinction between surrender of land under ss. 197 and 204D of National Land Code 1965 - Significance of such distinction - National Land Code 1965, ss. 197, 204D*

LAND LAW: *Sub-division - Surrender of land - Whether surrender and realienation under s. 197 of the National Land Code creates a title in continuation - National Land Code 1965, ss. 42, 197, 204D*

The appellant, a developer, entered into an agreement to purchase two parcels of land ('the said lands') from a company called Ulu Behrang Estate ('the company'). The appellant intended to develop the said lands by sub-dividing the same and selling off individual lots to interested purchasers. It was a term of the agreement that the company would grant the appellant a power of attorney to facilitate the transactions. On 18 May 1994, the company duly executed a power of attorney in favour of the appellant by which the appellant was authorised to submit to the relevant authorities any conversion, layout, building, amalgamation or sub-division plans necessary for the development of the said lands.

The appellant initially hoped to achieve its objective of sub-dividing the said lands into lots by adopting a procedure provided under s. 204D of the National Land Code 1965 ('NLC') whereby the said lands would be surrendered to the state authority whereafter they would be immediately realienated to the company in sub-divided lots. The appellant submitted to the Director of Land and Mines ('the Director') an application for that purpose. However, as the said lands were held under qualified titles, the Director proposed that the said lands be surrendered to the state authority

according to s. 197 of the NLC so that they reverted to the state authority as state land, whereafter in the exercise of powers vested in it under s. 42 of the NLC, the state authority would realienate the said lands to the company.

On 2 February 1996, the said lands were surrendered to the state authority and documents of title thereto handed over to the Director – and the stated authority realienated the said lands back to the company in 1,146 sub-divisional lots.

However, a dispute arose between the appellant and the Director as the Director had informed that appellant that the power of attorney granted ceased to remain effective in respect thereof. The Director also informed the appellant that insofar as the 1,146 sub-divisional lots were concerned, the appellant was required to furnish a new power of attorney executed by the company authorising the appellant to deal with them. The reasons for the Director's stand were as follows: (i) that where land is surrendered pursuant to s. 197 of the NLC (as opposed to s. 204D of the NLC), it reverts and vests in the state authority as state land, freed of all interests and claims; (ii) that the process of land being surrendered and alienated back according to s. 42 of the NLC does not create a title in continuation (as opposed to s. 204G of the NLC); (iii) although the said lands were alienated back to the company, they now existed under 1,146 different documents of title and therefore the power of attorney could not be used in relation to the new titles; and (iv) the appellant could have applied for conversion and sub-division under Part 9, Chapter 1 of the NLC

It was against this that the appellant brought the instant appeal.
The issues for consideration were: (i) whether a preliminary objection raised by the Director regarding the *locus standi* of the appellant should be upheld; (ii) whether the reasons given by the Director for refusing to acknowledge the power of the attorney granted to the appellant were correct; and (iii) whether the Director was estopped from denying the effectiveness of the power of the attorney granted to the appellant.

Held:

[1] On the preliminary objection, s. 418 of the NLC provides that any person or body aggrieved by a decision of the Director may appeal to the court. The appellant was such person.

[1a] The surrender of the said lands affected the effectiveness of the power of attorney *vis-a-vis* the sub-divisional lots, but the power of attorney still existed especially between the appellant and the company.

[2] The difference between a surrender of land for sub-division under s. 197 and s. 204G of the NLC seems to be that on a surrender under s. 204G(2) of the NLC, the land reverts to the state authority as state land but it is to be treated as approved for realienation in sub-divided lots on the terms indicated by the state authority under s. 204E of the NLC, whereas under s. 197 of the NLC, there is no such 'built-in' treating of the land as approved for realienation in sub-divided lots. However as the Director had offered to realienate the said lands to the company in sub-divided lots upon their surrender, the said lands were therefore to be treated as approved for realienation in sub-divided lots on those terms on their surrender and therefore the difference in the surrender under ss. 197 NLC and 204G(2) NLC was of no real significance in this very case.

[3] A reading of ss. 197 and 42 of the NLC shows that neither section makes any mention of a title in continuation being issued in respect of land surrendered under s. 197 NLC and alienated back under s. 42 of the NLC. The same observation may be made about a surrender and approval for realienation under ss. 204E and 204G of the NLC.

[3a] While an application for surrender and realienation under s. 204B of the NLC attracts the application of the provisions of Chapter 1 of Part 9 of the NLC, an application for surrender and realienation under ss. 197 and 42 of the NLC must likewise attract the application of the same provisions which deal with the application for sub-division of land but not the surrender thereof. There was no need for the appellant to have applied for sub-division under Chapter 1 of Part 9 so as to obtain title in continuation to the sub-divisional lots.

[4] Estoppel cannot be raised to prevent a statutory body from exercising its statutory discretion or performing its statutory duty but there are two exceptions to the principle that a public authority cannot be estopped from exercising its duty and power: (i) where it has statutory power to delegate functions to its officers and there are special circumstances to justify a person dealing with that officer in thinking that the officer has power to bind the authority by an irrevocable decision; and (ii) where the authority waives a procedural requirement relating to some application made to it, whereupon it may be estopped from relying on the lack of formality.

[4a] The Director had in fact done what he said he would do and in doing so, it had not been shown that the Director had conducted himself in such a manner as to suggest that he was going to waive any requirements in relation to the use of the power of attorney in

relation to the sub-divisional lots. There was in fact no discussion at all on the power of attorney so that it could be said any form of estoppel had arisen.

[Appeal allowed.]

Case(s) referred to:

Government of the State of Negeri Sembilan & Anor v. Yap Chong Lan & Ors [1984] 2 CLJ 150 ***(foll)***

Lesco Development Corpn Sdn Bhd v. Yap Chong Lan & Ors [1984] 2 MLJ 123 ***(foll)***

United Malayan Banking Corpn Bhd v. Pemungut Hasil Tanah, Kota Tinggi [1984] 2 CLJ 146 ***(dist)***

Western Fish Products Ltd v. Penwith District Council & Anor [1981] 2 All ER 204 ***(foll)***

Legislation referred to:

National Land Code 1965, ss. 42, 124, 164, 157A, 183, 197, 204D, 292, 294, 297, 298, 299, 302(2), 303, 309(1), (2), 310, 311(b), 417, 418(1), (2)

For the appellant - Wong Kian Kheong (Andrew Chiew Ean Vooi with him); M/s Lee Hishammuddin

For the respondent - Mohamed Jazamuddin Hj Ahmad Nawawi SFC

Reported by Mariette Peters-Goh

JUDGMENT

Clement Skinner J:

This is an appeal against the decision of the director of lands and Mines, Perak (hereafter 'the director') refusing to recognise that a power of attorney granted in favour of Golden Approach Sdn. Bhd. (hereafter 'the appellant') would enable the appellant, using that power of attorney, to deal with 1,146 sub-divisional lots of land hereinafter described. The facts giving rise to this appeal are these.

The appellant is a developer. On 18 May 1994 it entered into an agreement to purchase two parcels of land measuring in total some 2,000 acres from a company called Ulu Behrang Estate Sdn. Bhd. (hereafter 'Ulu Behrang'). Those lands were held under titles P.T. 4020, QT No. HS(D) BP 394 and P.T. 4021 QT No. HS(D) BP 395 (hereinafter the 'said lands').

The appellant intended to develop the said lands by subdividing the same and selling off individual lots to interested purchasers in a project called 'Diamond Creeks Country Retreat'. It was therefore a term upon which the said lands were purchased that Ulu Behrang would grant to the appellant

a power of attorney, to facilitate the aforementioned purposes. Accordingly, on 18 May 1994, Ulu Behrang duly executed a power of attorney in favour of the appellant in respect of the said lands in which the appellant was authorised and empowered to, *inter alia*, apply or submit to the relevant government authorities any conversion, layout, building, amalgamation or subdivision or other plans necessary for the development of the said lands; the appellant was also authorised to sign and execute any documents or instruments for the registration of the transfer or assignment of any part or subdivided portions of the said lands to its purchasers or nominees.

The appellant initially hoped to achieve their objective of subdividing the said lands into lots by adopting a procedure provided under s. 204D of the National Land Code (hereafter 'NLC') whereby the said lands would be surrendered to the state authority whereafter it would be immediately re-alienated to Ulu Behrang in sub-divisional lots. On 8 September 1995, the appellant, through a firm of surveyors, submitted to the director an application for that purpose. However, as the said lands were held under qualified titles, that is, in respect of which a final survey had not been completed, the director proposed that the said lands be surrendered to the state authority according to the provisions of s. 197 NLC so that the said lands reverted to the state authority as state land, whereafter, in the exercise of powers vested in it under s. 42 NLC, the state authority would re-alienate the said lands to Ulu Behrang. I pause to mention here that although the term used in s. 42 NLC is 'to alienate' state land, I use the word 're-alienate' because that is the word used by the director in his letter concerning the matter which I shall be referring to next.

The director's proposal is contained in a letter dated 23 January 1996. That letter also set out several other terms and conditions upon which the director was prepared to accept a surrender of the said lands and thereafter to alienate them back to Ulu Behrang. The conditions as set out in the director's letter of 23 January 1996 were acceptable to the appellant and so, on 2 February 1996, the said lands were duly surrendered to the state authority and the documents of title thereto handed over to the director. Thereafter, the state authority as promised re-alienated the said lands back to Ulu Behrang in 1,146 sub-divisional lots each with their own issue document of title which are numbered as HS(D) 2689 to HS(D) 3835 inclusive.

It was with the issuance of the 1,146 individual titles to the sub-divisional lots that a dispute has arisen between the appellant and the director. The appellant has sold off individual lots to purchasers and needs to have these lots transferred to them. Correspondence was entered into between the appellant's former solicitors and the director regarding the sub-divisional

lots and the power of attorney granted to the appellant in respect of the said lands. In two letters written by the director dated 7 April 1999 and 6 May 1999, the director informed the appellant's former solicitors that as the said lands had been surrendered to the state authority as of 5 May 1996, the power of attorney granted to the appellant over the said lands ceased to remain effective in respect thereof. The director also informed the appellant that in so far as the 1,146 sub-divisional lots were concerned, the appellant was required to furnish a new power of attorney executed by Ulu Behrang authorising the appellant to deal with them. It is against the above decision that the appellant brings this appeal.

When this appeal came on for hearing, Encik Mohamed Jazamuddin bin Hj. Nawawi, learned Senior Federal Counsel who appeared for the director, raised a preliminary objection. It was his submission that the appellant had no *locus standi* to bring this appeal because the appellant was not the registered proprietor of the said lands; therefore, when the said lands were surrendered and reverted to state land freed of all claims and interests etc., the power of attorney granted to the appellant had ceased to exist by reason whereof the appellant had no right to bring this appeal. I had dismissed the preliminary objection for the following reasons.

First, s. 418 NLC describes who may bring an appeal and I was satisfied that the appellant was such a person. Sub-section (1) of s. 418 provides that "any person or body aggrieved by any decision ... of the State Director ... may ... appeal therefrom to the court"; and sub-s. (2) of s. 418 defines a "decision" as including any act, omission, refusal, direction or order. To begin with, it was my view that when the director made known to the appellant his refusal to recognise the power of attorney as being good for the purposes of dealing with the 1,146 sub-divisional lots and that the appellant was required to furnish him with a fresh power of attorney in respect of those lots, that act of refusing amounted to a decision. It was a decision upon which an appeal would lie. I was also satisfied that the appellant was a "person aggrieved" by that decision because the appellant, as the purchaser for value of the said lands and the person to whom the power of attorney had been granted for the purposes stated therein, was directly and materially affected by the decision of the director.

Secondly, I did not agree with the submission of learned senior federal counsel that on a surrender of the said lands, the power of attorney had "ceased to exist". It did not. The surrender of the said lands may have given rise to questions about the effectiveness of the power of attorney *vis-a-vis* the sub-divisional lots, but the power of attorney did not "cease to exist" as alleged; it remained very much on footing, especially between Ulu Behrang and the appellant, and, the fact that the said lands had been

surrendered did not, in my view, affect the position of the appellant as a person aggrieved by the decision of the director because the appellant does not seek in this appeal to rely upon the power of attorney to claim an interest in the said lands: all the appellant asserts is that the power of attorney can still be used in respect of the sub-divisional lots. With that, I turn to consider the substantive appeal.

In arguments before me, the learned Senior Federal Counsel submitted that the Director was quite correct in the stand he has taken. It is the director's case that the power of attorney granted to the appellant is ineffective in respect of the 1,146 sub-divisional lots because the procedure adopted to subdivide the said lands was by way of a surrender under s. 197 NLC and thereafter alienation back to Ulu Behrang under s. 42 NLC; whereas, if the appellant had adopted the procedure under s. 204A to H NLC, the power of attorney would still be effective. The reasons for the director's stand may be summarised as follows:

(i) Where land is surrendered pursuant to s. 197 NLC, it reverts and vests in the state authority as state land, freed of all interests and claims etc. As state land, the "surrendered" land may be disposed off at will by the state authority under s. 42 NLC, whereas land which is surrendered under s. 204D NLC shall by virtue of s. 204B NLC, be immediately re-alienated to the proprietor;

(ii) the process of land being surrendered and alienated back under s. 42 NLC does not create a title in continuation;

(iii) although the said lands have been alienated back to Ulu Behrang, they now exist under 1,146 different issue documents of title, namely, HS(D) 2689 to HS(D) 3835 and therefore the power of attorney cannot be used in any manner whatsoever in relation to the new titles;

(iv) the appellant could have applied for conversion and subdivision under Part Nine, Chapter 1 NLC. If they had done so, the lands would carry the same title, or alternatively, if a new title is issued such new title shall be in continuation of the original title by reason whereof the power of attorney would still be effective.

Those then are the reasons given by the director for his stand. The question that arises for determination in this appeal is whether those reasons are correct. Mr. Wong Kian Kheong of counsel for the appellant says the director is wrong and has sought to impugn the decision of the director on three grounds. He submitted that:

(a) the provisions of the NLC do not empower the director to decide on the validity of a power of attorney, as such the director could not make the decision he did;

(b) the words used in the power of attorney to confer authority on the appellant to deal with the said lands are wide enough to include a reference to the 1,146 sub-divisional lots; and

(c) on the particular facts of this case, the director is estopped from making the decision he did.

With regard to the appellant's first contention, counsel for the appellant submitted that there are only three categories of provisions found in the NLC which involve the registrar in any way when a power of attorney is used in conjunction with land. Those three categories are found in Division IV of the NLC. According to counsel, the first category of provisions are to be found in ss. 292, 294 and 309(1) and (2) NLC and concern the use of a power of attorney in the registration of instruments of dealing in respect of land. The second category of provisions relate to the powers, of the registrar where a power of attorney accompanies an instrument of dealing which requires to be registered and those provisions are to be found in ss. 297, 298, 299, 302 and 303 and perhaps 311 of the NLC. The third category is constituted by s. 157A of the NLC which, deals with an application by a donee of a power of attorney to the registrar. After referring to the wordings of these various sections and their scope, counsel for the appellant submitted that the powers conferred on the registrar are very narrow and do not extend to making a decision on the validity of the power of attorney or of requiring that a new power of attorney be executed in respect of the 1,146 sub-divisional lots. According to counsel, if at all, the registrar's duty to decide the fitness for registration of an instrument of dealing accompanied by a power of attorney under the second category of provisions is limited to making the enquiries mentioned in s. 302(2) NLC and s. 311 NLC. Those enquiries are limited to enquiring whether a particular power of attorney is still in force (under s. 311(b) NLC).

Counsel for the appellant emphasised that if an instrument is presented for registration accompanied by a power of attorney or pursuant to a power of attorney, the provisions of ss. 309 and 310 NLC are triggered, and, these provisions do not empower the registrar to enquire into the validity of a power of attorney. Under the NLC, the registrar can suspend, reject or accept the instrument of dealing (whether accompanied or not accompanied by a power of attorney) but the registrar cannot decide that a power of attorney is valid or invalid and cannot require a fresh power of attorney

to be produced. According to counsel, the question of the validity of a power of attorney is a question to be decided by reference to the Power of Attorney Act 1949, the Contracts Act 1950, the common law and the rules of equity. That is a question to be decided by a court and not by a registrar.

It is evident from the above submissions that the appellant regards the director as having made a decision on the validity of the power of attorney in question. With due respect to counsel for the appellant, I do not think it is the case of the director that the power of attorney granted to the appellant is invalid. In submissions, learned Senior Federal Counsel pointed out that the director does not challenge the validity of the power of attorney. I agree with that submission. It is quite evident that what the director has done is to state his stand on whether or not he regards the power of attorney, which was granted in respect of the said lands, to be still effective or applicable in respect of the 1,146 subdivisional lots and to give his reasons for taking that stand. To decide the issue at hand, it is not necessary, in my view, to undertake a review of the powers of the registrar under the three categories of sections in the NLC. I think the issue is to be resolved by examining the consequences of the appellant having undertaken a subdivision of the said lands by accepting the proposal of the director and adopting the procedure under s. 197 and s. 42 NLC as opposed to s. 204B to G of the NLC to see if the reasons given by the director for his stand is correct or not and if they are, whether the director is to be estopped from insisting on relying on that difference to support the stand he has taken.

With that, I turn to consider first, whether the director was correct to take the view that because the said lands had been surrendered pursuant to s. 197 NLC and had reverted to State land, they could be disposed of at will by the state authority under s. 42 NLC, whereas if the said lands had been surrendered under s. 204D NLC, they would by virtue of s. 204B be immediately re-alienated to the proprietor. I find that for the reasons hereafter stated, the director was not:

(a) while it is true that generally speaking, on a surrender of land under s. 197 NLC, it reverts to state land and may be disposed off at will by the state authority, each case must be decided according to its own particular facts. In this case, the director had offered to re-alienate the said lands back to Ulu Behrang on the terms and conditions set out in his letter of 23 January 1996 and such offer had been accepted. Therefore, on their surrender, although the said lands vested in the State Authority as State land, they were not available for disposal at

will as contended by learned Senior Federal Counsel but had to be treated as being approved for re-alienation in sub-divisional lots: a position no different than a surrender under s. 204B and s. 204G NLC;

(b) learned Senior Federal Counsel sought to impress upon me that on a surrender of land under s. 197 NLC, it reverts to state land freed of all claims or interests etc. and this fact made all the difference in this case. I regret to say that on the particular facts of this case, I did not find such fact was of any telling difference. It is true that on a surrender of land under s. 197 NLC, it reverts to state land. But so does land surrendered under s. 204G NLC. Under s. 204G(2), the land reverts to and vest in the state authority as state land and the issue document of title to the land shall be destroyed. The difference between a surrender of land for subdivision under s. 197 and s. 204G NLC seems to be this: on a surrender under s. 204G(2), the land reverts to the state authority as state land but is to be treated as approved for re-alienation in sub-divisional lots on the terms indicated by the state authority under s. 204E, whereas under s. 197, there is no such built-in "treating" of the land as approved for re-alienation in sub-divisional lots. However, as I have pointed out earlier, because the director had offered to re-alienate the said lands to Ulu Behrang in sub-divisional lots upon their surrender on the terms indicated in his letter of 23 January 1996, and such offer had been accepted, the said lands were in fact to be treated as approved for re-alienation in sub-divisional lots on those terms on their surrender and therefore the difference in a surrender under s. 197 and s. 204G(2) was of no real significance in this case.

I next consider whether the learned Senior Federal Counsel was correct in his contention that when land is surrendered for subdivision under s. 197 and alienated back under s. 42 NLC, the process did not create a title in continuation. Before I do so, I should point out that implicit in that contention is the proposition that where land is surrendered for subdivision and re-alienated under s. 204B, that process creates a title in continuation which will allow a power of attorney granted in respect of the surrendered lands to be still applicable in respect of the re-alienated sub-divisional lots. Learned Senior Federal Counsel did not in submissions state the basis upon which that submission was made and I have difficulty agreeing with it for the following reasons: in the first place, while a reading of ss. 197 and 42 NLC show that neither section makes any mention of a title in continuation being issued in respect of land surrendered under s. 197 and alienated back under s. 42 NLC; that same observation may be made about a surrender and approval for re-alienation under ss. 204E and 204G NLC.

Secondly, if as suggested by learned Senior Federal Counsel, a subdivision exercise carried out under the procedures available under s. 204B to G NLC results in a title in continuation being issued to the sub-divisional lots, that continuation must arise as a result of the operation or application of other provisions of the NLC which deal with continuation of title. Those provisions are found in Chapter 3 of Part Ten and Chapter 3 of Part Eleven of the NLC. It will be observed that these two chapters, which specifically provide for the issuance of title in continuation to the individual portions into which land is subdivided into (see s. 164 and s. 183 NLC), are triggered or 'brought into operation if Chapter 1 of Part Nine NLC comes into play. Chapter 1 of Part Nine NLC deals with applications for the sub-division of land but not the surrender thereof. Surrender is dealt with in Part Twelve NLC and s. 197 as well as s. 204A to H are found in Part Twelve. If that be the case, and if an application for surrender and re-alienation under s. 204B attracts the application of the provisions of Chapter 1 of Part Nine NLC (which it must do, otherwise how else would Chapter 3 of Part Ten or Eleven be brought into play to allow title in continuation to be issued to the sub-divisional lots), an application for surrender and re-alienation under s. 197/s. 42 NLC must likewise attract the application of Chapter 1 of Part Nine NLC. I do appreciate, of course, that it may be argued that the provisions of Chapters 1 and 3 of Part Nine continue to apply to an application for surrender and re-alienation under s. 204B because s. 204A expressly states that "the provisions of this Part shall not be construed as affecting the continued operation of the provisions of s. 124 and Chapters 1 and 3 of Part Nine," but I consider the words "the provisions of this Part" as including a reference to a surrender under s. 197 NLC as well, it being found in Part Twelve too.

It follows from what I have said when discussing this second ground of the Director that I must also reject the reasons relied on by him in his fourth ground, namely, the appellant should have applied for subdivision under Chapter 1 of Part Nine so as to obtain title in continuation to the sub-divisional lots.

The third ground relied upon by the director for not recognising the power of attorney was that the said lands have been re-alienated under different issue documents of title each bearing its own number. I regret I cannot agree with the reasoning of the director because even if the said lands had been surrendered and re-alienated according to the procedure in s. 204B to G NLC, the said lands would have been re-alienated back to Ulu Behrang in different issued documents of title, each with its own number too. If, in those circumstances, the director is willing to recognise the power of attorney, I cannot see any good reason why he should not do so now.

I also agree with counsel for the appellant that the power of attorney as drafted is wide enough to refer to or include a reference to the sub-divisional lots arising from a subdivision of the said lands. In particular, I refer to para. 1(b) of the power of attorney which reads:

> 1. To execute, sign, initial, liaise and do any and all letters, documents, instruments or acts or things that is necessary on behalf of the Donor for:
>
> (a) ...
>
> (b) the registration of the transfer or assignment of any part or subdivided portion of the said properties to the purchaser's purchaser or purchasers or his nominee or nominees; and

Thus, even though the issue document of title to the 1,146 sub-divisional lots do not contain any reference to the said lands, the director is in possession of records which show that the said lands have been subdivided and re-alienated as the 1,146 sub-divisional lots.

The findings I have already arrived at should be sufficient to dispose of this appeal but for completeness, I move next to consider whether on the particular facts of this case, the director is estopped from denying the effectiveness of the power of attorney in respect of the 1,146 sub-divisional lots. Relying on the decision in *United Malayan Banking Corporation Bhd. v. Pemungut Hasil Tanah, Kota Tinggi* [1984] 2 CLJ 146, learned Senior Federal Counsel cautioned against importing the use of equitable principles in determining rights under our NLC which is based on the Torrens system. I do not think that what was said in that case would have any application to the facts of our case. The appellant is not, by the use of the doctrine of estoppel, trying to assert a right to or interest in land. The doctrine is also not being applied to get around the provisions of the NLC; the appellant seeks to apply the doctrine against the conduct of the director.

With regard to the application of the concept of equitable estoppel in the area of public law, the then Federal Court in *Government of the State of Negeri Sembilan & Anor. v. Yap Chong Lan & Ors.; Lesco Development Corporation Sdn. Bhd. v. Yap Chong Lan & Ors.* [1984] 2 MLJ 123 referred with approval to the decision in *Western Fish Products Ltd. v. Penwith District Council & Anor.* [1981] 2 All ER 204 in which the English Court of Appeal held that an estoppel could not be raised to prevent a statutory body exercising its statutory discretion or performing its statutory duty but did recognise that there were two kinds of exception to the principle that a public authority could not be estopped from exercising its duty and powers:

(a) where it had statutory power to delegate functions to its officers and there were special circumstances to justify a person dealing with that officer in thinking that the officer had power to bind the authority by an irrevocable decision; and

(b) where the authority waives a procedural requirement relating to some application made to it, whereupon it may be estopped from relying on the lack of formality.

The question for decision here is, do either of these exceptions apply to the facts of our case? As regards the first exception, it clearly can have no application. As far as the second exception is concerned, I find that it also would not apply because in so far as the surrender and re-alienation of the said lands are concerned, the director has in fact done what he said he would do, and in doing so, it has not been shown that the director had conducted himself in such a manner as to suggest that he was going to waive any requirements in relation to the use of the power of attorney in relation to the 1,146 sub-divisional lots – there was in fact no discussion at all on the power of attorney so that it could be said any form of estoppel had arisen.

Notwithstanding what I have said above, in the result, I find that the appellant succeeds in this appeal. There remains the question of what order I should make to give effect to this decision. According to the director, he refuses to recognise the power of attorney in relation to the 1,146 sub-divisional lots because they are not titles in continuation and they bear no reference to the fact that they formerly formed part of the said lands. To give effect to this decision, I find that it would be most appropriate if I order, pursuant to the power vested in this court by s. 417 NLC, that the director take such steps as may be necessary to endorse on the issue documents of title to the 1,146 sub-divisional lots a memorial to the effect that they were formerly part of the said lands or alternatively, that they are titles issued in continuation to that under which the said lands were held and make the necessary indorsements on the issue documents of title to reflect such continuation.

I accordingly allow this appeal with costs to the appellant.